

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In re Application of: David E. MCDYSAN <i>et al.</i>	Confirmation No.: 7587
Filed: November 28, 2000	Group Art Unit: 2456
Attny Docket No.: RIC00044	Examiner: Bates, K.
Customer No.: 25537	

For: MESSAGE, CONTROL AND REPORTING INTERFACE FOR A DISTRIBUTED
NETWORK ACCESS SYSTEM

REPLY BRIEF

Honorable Commissioner for Patents
Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is submitted in response to the Examiner's Answer mailed November 6, 2008.

I. STATUS OF THE CLAIMS

Claims 1-40 are pending in this appeal. No claim is allowed.

Claims 1-4, 7-9, 12, 13, 17, 20-24, 27, 28, 31, 32, 36, 39, and 40 stand rejected under 35 U.S.C. §102(e) as anticipated by *Albert et al.* (US 6,606,316).

Claims 5 and 25 stand rejected as obvious under 35 U.S.C. §103 based on *Albert et al.* (US 6,606,316) in view of *Haas* (US 5,115,432).

Claims 6, 18, 35, and 37 stand rejected as obvious under 35 U.S.C. §103 based on *Albert et al.* (US 6,606,316) in view of *Feldman et al.* (US 6,055,561).

Claims 19 and 38 stand rejected as obvious under 35 U.S.C. §103 based on *Albert et al.* (US 6,606,316) in view of *Grant et al.* (US 5,027,269).

Claims 10, 11, 29, and 30 stand rejected as obvious under 35 U.S.C. §103 based on *Albert et al.* (US 6,606,316) in view of *Gai et al.* (US 6,651,096).

Claims 6, 14, 15, 26, 33, and 34 stand rejected as obvious under 35 U.S.C. §103 based on *Albert et al.* (US 6,606,316) in view of *Gibson et al.* (US 6,680,943).

II. GROUND OF REJECTION TO BE REVIEWED

Whether claims 1-4, 7-9, 12, 13, 17, 20-24, 27, 28, 31, 32, 36, 39, and 40 are anticipated under 35 U.S.C. §102(e) by *Albert et al.* (US 6,606,316)?¹

Whether claims 5 and 25 are obvious under 35 U.S.C. §103 based on *Albert et al.* (US 6,606,316) in view of *Haas* (US 5,115,432)?

Whether claims 6, 18, 35, and 37 are obvious under 35 U.S.C. §103 based on *Albert et al.* (US 6,606,316) in view of *Feldman et al.* (US 6,055,561)?

Whether claims 19 and 38 are obvious under 35 U.S.C. §103 based on *Albert et al.* (US 6,606,316) in view of *Grant et al.* (US 5,027,269)?

Whether claims 10, 11, 29, and 30 are obvious under 35 U.S.C. §103 based on *Albert et al.* (US 6,606,316) in view of *Gai et al.* (US 6,651,096)?

Whether claims 6, 14, 15, 26, 33, and 34 are obvious under 35 U.S.C. §103 based on *Albert et al.* (US 6,606,316) in view of *Gibson et al.* (US 6,680,943)?

¹ It is noted that the *Albert et al.* reference is mislabeled as U.S. Patent No. “6606319” at the top of page 3 of the Answer, rather than U.S. Patent No. 6,606,316.

III. ARGUMENT

Appellants maintain and incorporate the positions presented in the Appeal Brief filed September 29, 2008, but present further refutation of certain assertions presented in the Examiner's Answer.

At pages 11-14 of the Answer, the Examiner refutes Appellants' argument that *Albert et al.* does not teach "different first and second networks and different first and second network interfaces." In particular, the Examiner asserts (page 12 of the Answer) that Appellants do "not believe that there exists a network located between the forwarding agent (231) and the servers (220), and relies in part on the idea that since network (210) is labeled as a network, if a network had existed between the forwarding agent and servers, there would have been another network element shown in the figure." In response, at pages 12-13 of the Answer, the Examiner expostulates that networks comprise many different elements, and that while "clouds" are sometimes used to represent such networks and the elements therein, no network cloud is employed between the forwarding agents and the servers in *Albert et al.* because the disclosure of *Albert et al.* is specific as to the actual connection of the elements.

Appellants do not gainsay that the servers 220 in *Albert et al.* **could**, conceivably, be located within a network separate from a network comprising the forwarding agents 231, 232, and service managers 1 and 2. Appellants are merely arguing that *Albert et al.* discloses no such arrangement (nor any suggestion for such an arrangement). For the reasons set forth in the principal Appeal Brief, all evidence, based on the disclosure of *Albert et al.*, would appear to point to no separate networks for the forwarding agents/service managers and the servers 220.

The arguments by the Examiner as to why there is probably no "network cloud" between the forwarding agents and the servers, as to the sending of communication between servers and

agents indicating separate networks (communications may also be sent between element within the same network), and as to the traveling of packets from the forwarding agent to the servers through a connection indicating a second network (packets may travel between elements within the same network), are speculative, at best. However, a rejection based on anticipation under 35 U.S.C. §102(e) may not be based on speculation but, rather, must be predicated on a factual basis established by the evidence of record. A rejection for anticipation under §102 requires that the four corners of a single prior art document describe every element of the claimed invention, **either expressly or inherently**, such that a person of ordinary skill in the art could practice the invention without undue experimentation. *See Atlas Powder Co. v. Ireco Inc.*, 190 F.3d 1342, 1347, 51 USPQ2d 1943, 1947 (Fed. Cir. 1999); *In re Paulsen*, 30 F.3d 1475, 1478-79, 31 USPQ2d 1671, 1673 (Fed. Cir. 1994). There is simply no disclosure in *Albert et al.*, either expressly or inherently, that the forwarding agents/service managers and the servers are in separate networks, and the Examiner's engaging in speculation and wishful thinking will not make it so.

Accordingly, *Albert et al.* does not anticipate claims 1-4, 7-9, 12, 13, 17, 20-24, 27, 28, 31, 32, 36, 39, and 40 and the Honorable Board is respectfully requested to reverse the rejection of these claims under 35 U.S.C. §102(e).

III. CONCLUSION AND PRAYER FOR RELIEF

The claims require, for example, “routing, via a second network interface different from the first network interface,...” but *Albert et al.* discloses no such different first and second networks or different first and second network interfaces. Appellants, therefore, request the Honorable Board to reverse each of the Examiner’s rejections.

Respectfully Submitted,

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November 26, 2008
Date

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